

SURVEY OF RECENT DECISIONS
OF
THE HONORABLE PAUL J. KILBURG

**U.S. Bankruptcy Court
Northern District of Iowa**

October 1, 1995 -- September 24, 1996

Prepared by

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List of Prior Decisions (April 23, 1993 to September 30, 1995)

I. IN GENERAL, 2001-2120

C. Jurisdiction, 2041-2080

In re S.O.S. Enterprises, Ltd.

28 U.S.C. § 157

No. 95-10203KC, Chapter 11, 2/26/96

In response to Debtor's motion to dismiss, Creditor requests that the Court retain jurisdiction over its adversary proceeding concerning Debtor's postpetition conduct, and protect its postpetition security interest. HELD: The Court has discretion to retain jurisdiction over an adversary proceeding after dismissal of the related bankruptcy case. Factors considered include judicial economy, convenience of the parties, fairness and comity. This matter does not require continuing oversight and no party will be prejudiced by dismissal. Creditor's adversary proceeding is dismissed.

II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200

B. Actions and Proceedings in General, 2151-2180

Eckhart v. Simon (In re Carl and Diane Simon)

11 U.S.C. § 506

No. 94-21591KD, Adv. 94-2173KD, Chapter 12, 10/18/95
appeal dismissed 6/19/96

Debtor requests amendment of findings from the Court's ruling filed September 26, 1995. He argues that the Court should not have relied on his testimony in a state court proceeding on the issue of whether he or his brother owned cows subject to Plaintiff's security interest. He asserts that testimony was effectively impeached in this proceeding. Debtor also requests the Court calculate the amount of certain loans by Tri-State. HELD: In light of Debtor's contradictory testimony and financial interest, the Court will not amend its findings. No factual finding is made regarding the amount of the Tri-State debt.

III. THE CASE, 2201-2360

IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490

C. Relief from Stay, 2421-2460

In re Kenneth & Warren Contracting Co.

11 U.S.C. § 362(d)

No. 96-61400KW, Chapter 11, 7/19/96

Creditor seeks return of an excavator in which it has a security interest. Debtor uses the machine to break up concrete in its paving contractor business. HELD: Debtor's proposed payments of approximately one-half the original payment provided by the security agreement sufficiently protects

Creditor's security interest. Although Debtor has little equity in the machine, it is essential to Debtor's operations. This early in Debtor's case, Creditor is not entitled to relief from the stay.

In re Ricki and Mary Ann Engelby
No. 96-10008KC, Chapter 13, 6/28/96

11 U.S.C. § 362(d) (1)

Creditor seeks relief from stay for cause under § 362(d) (1) based on Debtors' post-petition defaults in mortgage payments. No plan has yet been confirmed. Debtors assert that Creditor is adequately protected by their substantial equity in the property. HELD: Post-petition, pre-confirmation defaults in mortgage payments do not necessarily constitute "cause" for relief from the automatic stay. Other factors such as the value of the collateral, possible appreciation or depreciation in the value and the prospects for a successful reorganization must be taken into account. Creditor is not entitled to relief from stay at this time.

D. Enforcement of Injunction or Stay, 2461-2480

In re Raymond and Janis Troester
No. 95-21085KD, Chapter 7, 11/6/95

11 U.S.C. § 362(a)
§ 362(h)

Fed. R. Bankr. P. 9006(e)

Debtor complains that Creditor and its employees violated the automatic stay by contacting him requesting payment after he filed his bankruptcy petition. He states that Creditor's salesman came to his house and got angry which resulted in a scuffle. The salesman testified that he didn't know of Debtor's bankruptcy case and when he got to Debtor's house at Debtor's request, Debtor assaulted him. One of Creditor's owners then called Debtor and said he was getting a judgment against Debtor. Creditor received no written notice of the bankruptcy until it received a copy of the Motion for Sanctions. HELD: Debtor failed to establish Creditor had notice of the bankruptcy case prior to sending billing statements or prior to the salesman's visit. The salesman's remarks while being verbally threatened and physically assaulted are not a willful violation of the stay. The owner's statements over the telephone after the altercation, however, were made with actual notice of the bankruptcy case and do constitute a violation of the stay. The Court awards \$50 for actual damages, \$100 for attorney fees and no punitive damages.

V. THE ESTATE, 2491-2760

C. Property of Estate in General, 2531-2570

In re Larken Hotels Limited Partnership
No. 94-10388KC, Chapter 11, 6/3/96

11 U.S.C. § 350(b)
§ 1127(b)

Debtor wishes to reopen Chapter 11 case to disclose a potential ownership interest in a hotel owned by a subsidiary of the Pension Fund. The Fund asserts that Debtor may not reopen because it is bound by the Confirmed Plan which fails to disclose and provide for administration of this potential asset. HELD: Debtor is barred from reopening its Chapter 11 case. The Confirmed Plan is binding on Debtor and the Fund. The doctrines of judicial estoppel and res judicata would preclude Debtor from litigating its

potential claim postconfirmation. The Plan cannot be modified because it has been substantially consummated.

Dutton v. Kondora (In re Sylvia J. Kondora)

11 U.S.C. § 523(a) (4)

No. 95-10588KC, Adv. 95-1105KC, Chapter 7, 4/10/96

Plaintiffs are adopted half siblings of Debtor. They claim they were entitled to a share of their half-brother's Wisconsin probate estate over which Debtor served as personal representative. Plaintiffs assert Debtor's failure to turn over their share constituted defalcation in a fiduciary capacity making their judgments against Debtor nondischargeable. Debtor asserts that her Wisconsin attorney advised her that Plaintiffs were not to receive a distribution from their brother's estate. Debtor's ex-husband intervenes to request return of funds garnished from joint bank account. HELD: Plaintiffs' complaint is a core proceeding. Intervenor's claim is "related to" Debtor's bankruptcy case. This is a final order on both issues pursuant to consent of the parties. Debtor was acting in a fiduciary capacity as personal representative of her brother's probate estate. She committed defalcation when she failed to list Plaintiffs as heirs of their brother's probate estate and to distribute their share of the estate to them. Defalcation may be based on negligence. Therefore, the alleged advice of attorney, contradicted in the record, is irrelevant. Plaintiffs were only entitled to garnish one-half of the funds in the joint bank account held in the names of Debtor and her ex-husband.

In re David and Heidi Zulaica

11 U.S.C. § 541(a) (6)

No. 95-22000KD, Chapter 7, 3/6/96

Trustee objects to Debtors' claim that a bonus for Debtor's reenlistment in the Iowa Army National Guard is either exempt or not property of the bankruptcy estate. HELD: The reenlistment bonus is most properly treated as earnings for services Debtor will perform through the course of his enlistment. He reenlisted five days after filing his bankruptcy petition. Therefore, the entire bonus constitutes postpetition earnings which are not property of the estate. The timing of Debtor's reenlistment does not violate the Bankruptcy Code.

F. Fraudulent Transfers, 2641-2670

Terpstra v. Bails (In re Ronald W. Downs, Sr.)

11 U.S.C. § 544(b)

No. 94-11980KC, Adv. 95-1080KC, Chapter 7, 12/26/95

§ 547(b)

Trustee seeks partial summary judgment on claims to set aside transfers of property from Debtor to Defendant. He argues that the record indicates that Debtor transferred money and property to Defendant, an insider, with the intent to defraud his creditors. Defendant asserts that disputed factual issues preclude summary judgment. HELD: Issues of mental state and intent are usually questions of fact which preclude summary judgment. The issue of actual intent to defraud requires a factual determination at trial. Other issues of fact include insolvency, insider status and ownership of the property. Summary judgment is denied.

Reil v. Stanley (In re Ronald and Kaye Reil)

11 U.S.C. § 544(b)

No. L92-00860W, Adv. L92-0094W, Chapter 11, 12/8/95

§ 548(a) (2)

Over a period of almost a year, Debtors purchased jewelry from Defendants who operated a pawnshop. They also sold or traded some of the items back to Defendants and placed some items with Defendants on consignment. Defendants seek to avoid some of the transfers as fraudulent under § 544(b) or 548(a) (2). They also assert that Defendants committed negligent misrepresentation, fraudulent misrepresentation and conversion. Defendants counterclaim for amounts due on Debtors' account. HELD: Debtors have failed to prove they were insolvent at the time of the transfers. Therefore, they cannot avoid the transfers as fraudulent. Debtors cannot use the strong-arm powers of § 544(b) in this situation. Negligent misrepresentation cannot be claimed against Defendants in this commercial transaction. Debtors failed to present satisfactory evidence to prove that Defendants fraudulently led them to transfer their jewelry for a sum less than 10 percent of the value of the jewelry. No conversion occurred as the jewelry was in the rightful possession of Defendants. Defendant's failed to prove that the prices charged Debtors were fair and reasonable to recover on their counterclaim.

VI. EXEMPTIONS, 2761-2820

Sauer v. Conley (In re Mabel Conley)

No. 95-62047KW, Adv. 95-6195KW, Chapter 7, 7/15/96

11 U.S.C. § 522(f) (1)

§ 523(a) (4)

§ 727(a) (2)

Plaintiff holds a state court judgment which he asserts is nondischargeable as arising out of fraud or defalcation while Debtor acted in a fiduciary capacity. The judgment arose from actions Debtor took while living with and acting as Plaintiff's "housekeeper". She had purchased cars and real estate through a power of attorney given by Plaintiff. Plaintiff further asserts that Debtor should be denied a discharge for failing to disclose property in her schedules. He also claims that her homestead is not exempt from his judgment. HELD: Plaintiff has failed to prove fraudulent intent in Debtor's failure to list certain property on her schedules. In the circumstances, the power of attorney Plaintiff gave Debtor created a fiduciary relationship. Plaintiff's judgment arose from fraud and defalcation by Debtor and is excepted from discharge. Debtor abandoned her original homestead before Plaintiff received his judgment. The homestead she subsequently occupied is not exempt from his judgment. Debtor is not entitled to avoid Plaintiff's lien.

In re Frederick and Debra Smith

No. 96-20243KD, Chapter 7, 5/7/96

11 U.S.C. § 522(f) (1)

Iowa Code § 627.6(11) (a)

Debtors seek to avoid liens on farm equipment. Bank argues that Debtors are not "engaged in farming" under the exemption statute. HELD: Debtors intend to return to farming. Their temporary cessation of farming the month before they filed bankruptcy should not defeat their claim of exemption. Because they are entitled to the exemption for farm equipment, they are also entitled to avoid the Bank's lien on that equipment.

In re Curtis and Cynthia Waterman

No. 95-61657KW, Chapter 7, 2/2/96

11 U.S.C. § 522(f) (1)

Debtors seek to avoid liens on two vehicles claimed exempt under Iowa's vehicle exemption statute. They assert that the vehicles are "tools of the trade" necessary to their home-based VCR repair business. Creditor objects. HELD: The Court considers whether the items are commonly used in and reasonably

necessary to debtor's trade or business. Some factors applied when considering whether vehicles are tools of the trade include whether they are family cars and otherwise generally used for transportation from place to place or specially modified for the business. These automobiles are not tools of the trade.

In re Randy L. Less

No. 95-11136KC, Chapter 7, 10/11/95

11 U.S.C. § 522(f)

§ 522(l)

Iowa Code § 627.6(10)

Debtor, a welder, seeks to avoid liens on personal property as tools of the trade. Creditor objects asserting that the items are farming tools, not welding tools. HELD: Although the items are deemed exempt under § 522(l), Creditor may still object to avoidance of the lien. The state law test and the bankruptcy law test to determine if an item is a "tool of the trade" are essentially identical. The question is whether the items are proper implements in the reasonable conduct of the debtor's trade. The liens on all the items are properly avoided except the flatbed trailer.

VII. CLAIMS, 2821-3000

A. In General, 2821-2850

In re Charles Andrew Blinks

No. 95-10100KC, Chapter 7, 4/19/96

11 U.S.C. § 502(b) (2)

§ 506(b)

§ 328(b)

Debtor objects to final report treatment of Creditor's claim. He asserts no interest should be paid on the principal amount due. The claim includes prepetition interest. Debtor also objects to fees sought by attorneys for Trustee. HELD: Debtor has no standing to object to allowance of claims. Regardless, prepetition interest on claims is allowed. The final report allows the correct amount for the claim. Fees for attorneys for Trustee are approved. The services rendered were not duties generally performed by trustees without the assistance of counsel.

In re National Cattle Congress, Inc.

No. 93-61986KW, Chapter 11, 10/10/95

11 U.S.C. § 101(5)

§ 506(a)

Iowa Code § 628.13

Bondholder Banks received relief from stay for foreclosure by consent order. They bid in the amount of their claim, \$3.7 million, at the sheriff's sale. The Banks then transferred their interest in the sheriff's sale certificate to Jamco pursuant to a confidential agreement for less than the \$3.7 million. Debtor seeks valuation of Jamco's claim for treatment in its Chapter 11 Plan. It asserts that the value of Jamco's claim is the lower amount it paid the Banks for the sheriff's certificate, rather than the \$3.7 million the Banks bid in at the foreclosure sale. HELD: Iowa property law controls the extent of the parties' rights. Bidding in the debt to purchase mortgaged property constitutes full satisfaction of the indebtedness. After issuance of the sheriff's certificate, the purchaser has a statutory lien during the redemption period. Neither the Banks nor Jamco holds a "claim" against Debtor. The Banks' right to payment terminated when they bid in the amount of their debt at the sheriff's sale. Jamco's rights now exist solely in the sheriff's certificate transferred to it by the Banks. The value of those rights is determined by Iowa Code Chapter 628 to be the face amount of the sheriff's certificate. The consent order could conceivably

modify state property rights. Debtor and the Banks intended that the Court retain jurisdiction over the rights of the parties to the collateral real estate through the consent order. The order, however, is not binding on third parties such as Jamco. Even if Jamco was bound by the consent order, the Court finds that the value of the properties is \$3.8 million using a "going concern" rather than a "liquidation" value.

B. Secured Claims, 2851-2870

In re Khalid and Michelle El Khabbaz
No. 95-22466KD, Chapter 13, 4/12/96

26 U.S.C. § 6321
Iowa Code § 597.2
11 U.S.C. § 506(a)

Debtors assert that IRS lien attaches only to husband's personal property, and not to wife's separate personal property. According to schedules and Debtors' affidavit, Mr. Khabbaz's only personal property consists of a 1987 red-titled Buick. The remainder of the personal property listed on the schedules is owned solely by Mrs. Khabbaz. HELD: The IRS's tax lien attaches only to the property interests of the delinquent taxpayer, as determined by state law. Iowa law states that property owned by one spouse is not liable for the debts of the other spouse. This law determines that Mr. Khabbaz has no property interest in Mrs. Khabbaz's separate property to which the IRS's lien can attach. Therefore, the IRS's claim is secured only to the extent of the value of Mr. Khabbaz's separate property, the 1987 red-titled Buick Century.

In re Sherilyn Kae Cook
No. 95-12544KC, Chapter 13, 4/1/96

11 U.S.C. § 506(a)
§ 1325(a) (5)

Creditor (ex-husband) objects to treatment of his property settlement judgment and attorney fee judgments arising from the parties' dissolution proceeding. The treatment of these claims hinges on the valuation of Debtor's business property. HELD: The Court will value Debtor's business property as a going concern. This valuation yields \$275 more equity than Debtor acknowledges in her plan.

In re National Cattle Congress, Inc.
No. 93-61986KW, Chapter 11, 12/26/95

11 U.S.C. § 502
§ 506(b)

Bondholder Banks assert that their remaining secured claim after making a successful bid at sheriff's sale of the real estate is a percentage of their total claim. Debtor asserts that the Banks' claim is limited by the value of the remaining collateral, i.e. personal property valued at \$200,000. HELD: The Banks are oversecured to the extent that the sale proceeds exceeded the amount of the claim attributable to the real estate. The \$200,000 value of the remainder of the collateral determines the extent of their remaining secured claim.

E. Determination, 2921-2950

In re Khalid and Michelle El Khabbaz
Bky. 95-22466KD, Chapter 13, 3/6/96

11 U.S.C. § 506(a)
Rule 3012
Rule 7001(2)

Debtors filed a Motion for Determination of IRS Claim. IRS moves to dismiss. IRS asserts that the matter should be brought as an adversary proceeding under Rule 7001(2) or as an objection to claim with 30-day notice. HELD: Rule 3012 is applicable to § 506(a) determinations. This allows such matters to be brought by motion rather than by adversary proceeding. This is not an objection to claim but rather a valuation of a claim. Motion to dismiss is denied.

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

A. In General, 3021-3060

In re Paul and Andra Tompkins

Rule 2004

Bky. 95-12505KC, Chapter 7, 3/6/96

Trustee requests production of telephone records in connection with a Rule 2004 exam in order to investigate allegedly fraudulent transfers. Debtors object to production of telephone records, asserting relevancy and rights to privacy. HELD: A Rule 2004 exam is a broad fishing expedition limited to matters regarding identifying assets and transactions involving Debtors' estate. In ruling on an objection to production of documents for a Rule 2004 exam, the Court must balance competing interests and weigh the relevance and necessity of the information sought. Debtors have no constitutional privacy interest in telephone records. The records are sufficiently relevant under Rule 2004 that Debtors should comply with the Trustee's request for production.

B. Possession, Use, Sale, or Lease of Assets, 3061-3100

In re Strayer Seed Farms, Inc.

11 U.S.C. § 363(c) (2)

No. 95-62081KW, Chapter 11, 1/19/96

Fed. R. Bankr. P. 4001(d)

Judge Kilburg, Chapter 11, 1/19/96

Bank with blanket security interest in all Debtor's property seeks payment of one delinquent note from Debtor's cash collateral. A group of unsecured creditors objects that such relief should be by way of settlement noticed to all creditors. HELD: Adequate protection is meant to ensure that secured creditors receive the value for which they bargained. Notice is prescribed by Rule 4001(d) and principles of due process. The Court concludes that Debtor's cash should be used to pay off the delinquent note. A senior lienholder is adequately protected by Debtor retaining sufficient cash to pay that debt. The complaining unsecured creditors are not entitled to adequate protection. Notice requirements have been met.

C. Debtor's Contracts and Leases, 3101-3130

Horkheimer v. Beier (In re William Beier)

11 U.S.C. § 365(d)

No. 95-60437KW, Adv. 95-6188KW, Chapter 13, 4/11/96

Iowa Code § 558.41
§ 656.2

Plaintiff seeks to regain possession of real estate which Debtor uses in his business. Plaintiff asserts that Debtor is a mere tenant. Debtor argues that he has possession of the property under a valid real estate contract with Plaintiff. HELD: The parties entered into a valid real estate contract. Debtor's failure to make the initial down payment did not render it invalid. Plaintiff did not pursue forfeiture under Iowa Code Chapter 656. This remains an executory contract which Debtor may assume under § 365(d). A more recent "Purchase Agreement" has terminated and has no effect on the parties' interests in the real estate. Debtor is entitled to retain possession of the property.

E. Compensation of Officers and Others, 3151-3250

In re Emerson Mattress, Inc.

11 U.S.C. § 331

No. 95-12358KC, Chapter 11, 6/7/96

U.S. Trustee objects to Counsel drawing down on Debtor's prepetition retainer prior to approval of fees by Court. HELD: The majority rule states that all retainers must be held in trust pending court approval. This rule has been followed in this district. Counsel may not take payments on fees absent the required application process.

See In re Charles Andrew Blinks in Section VII.A, on page ____.

In re Randall and Janice Kelchen

11 U.S.C. § 330(a)

No. 95-11471KC, Chapter 7, 3/29/96

Debtors object to payment to their former attorney beyond the \$3,000 retainer he already received. HELD: Debtors' former attorney is not entitled to compensation from the estate because his services did not benefit the estate. He is entitled to compensation from Debtors personally for his services. These services were within the parties' agreement for payment of legal fees and the amounts charged are fair and reasonable.

In re National Cattle Congress, Inc.

11 U.S.C. § 330(a)

No. 93-61986KW, Chapter 11, 3/26/96

§ 1103(c)

Debtor objects to Application for Compensation by counsel for Unsecured Creditors' Committee. It asserts that counsel was inappropriately involved in some aspects of the case. It also objects to fax charges and increase in hourly rates. HELD: Legal services in furtherance of the Committee's duties are considered necessary and compensable from the estate. Committee functions are fairly broad but counsel must not become overly involved in the case. Some of counsel's time spent in negotiating with competitors, moving for appointment of Chapter 11 Trustee and investigating corporate authority for mortgages does not warrant compensation. Counsel's increase in hourly rates is acceptable. Fax charges should be reduced.

In re Strayer Seed Farms, Inc.

11 U.S.C. § 1103

No. 95-62081KW, Chapter 11, 1/9/96

Unsecured Creditors Committee requests approval of appointment of counsel for the Committee. Debtor asserts that the attorney has a conflict of interest. HELD: Debtor has burden to show employment of attorney will result in representation of both the Committee and an individual creditor in a situation with a demonstrated conflict. The purpose of § 1103(b) is to protect against potential conflicts and to avoid the appearance of impropriety. Court approves employment of attorney with \$5,000 retainer. Approval of attorney's hourly rate must await application for payment of fees.

X. DISCHARGE, 3251-3440

C. Debts and Liabilities Discharged, 3341-3410

See Sauer v. Conley (In re Mabel Conley) in Section VI., on page ____.

Zulaica v. National Credit Serv. Corp.
(In re David and Heidi Zulaica)

11 U.S.C. § 523(a) (8)

No. 95-22000KD, Adv. 95-2176KD, Chapter 7, 6/24/96

Debtor requests that student loans be declared dischargeable under § 523(a) (8). She argues that the student loans are more than seven years old or, in the alternative, excepting the loans from discharge would impose undue hardship. Debtor had decided to stay home with her children rather than continue working as a dental assistant. HELD: All periods of suspension of repayment of student loans, occurring either before or after the initial due date, are deducted in determining whether student loans are excepted from discharge under § 523(a) (8) (A). Possible child care expenses and expenses of employment failed to support a finding of undue hardship precluding Debtor from regaining employment. Debtor has failed to prove the student loans are nondischargeable. Costs of collection and postpetition interest are also nondischargeable.

Kloft v. Lively (In re Michael and Sharon Lively)

11 U.S.C. § 523(a) (2)

No. 95-21907KD, Adv. 96-2009KD, Chapter 7, 6/7/96

§ 523(a) (6)

§ 523(d)

Plaintiff/Landlord claims that Debtor/Tenant received money by falsely representing the amount of propane left in the L.P. tank when he vacated the rental property. Landlord also asserts that Debtor committed willful injury by installing a TV antenna without permission and leaving the septic system plugged up. HELD: Landlord has failed to prove that Debtor misrepresented the amount of L.P. gas in the tank at the time he vacated the property. Further, Landlord has failed to prove Debtor intended to deceive Landlord. The minor damage caused by installation of the TV antenna does not amount to willful injury. Debtor did not prove that Debtor committed a knowing act which caused the septic system problem. Landlord is not liable to Debtor for attorney fees under § 523(d).

AT&T Universal Card Serv. v. Hinde (In re Shirley Sue Hinde)

11 U.S.C. § 523(a) (2) (A)

No. 95-60300KW, Adv. 95-6088KW, Chapter 7, 4/19/96

Creditor challenges dischargeability of credit card debt. It asserts Debtor did not have the intent or ability to pay when she made charges and received cash advances. Also, it argues that Debtor committed fraud when she used the card for business as opposed to personal purposes, in violation of the parties'

agreement. HELD: Use of the credit card serves as an implied representation of Debtor's intent and ability to pay. Plaintiff has failed to prove that this representation was inaccurate. At the time, Debtor had been able to pay her debts and was reasonably optimistic about obtaining financing for her new business. Using the card for purposes other than those specified in the cardholder agreement, if enforceable, does not constitute a misrepresentation under § 523(a) (2) (A). The debt is dischargeable.

See Dutton v. Kondora (In re Sylvia J. Kondora) in Section V.C, on page ____.

FCC National Bank v. Dietz (In re Carol S. Dietz)
No. 95-21286KD, Adv. 95-2158KD, Chapter 7, 3/4/96

11 U.S.C. § 523(a) (2) (C)
Rule 7036

Creditor moves for summary judgment on claim that credit card debt is nondischargeable. It asserts that Debtor's failure to respond to requests for admissions factually establishes that the debt was for luxury goods or cash advances within 60 days before the petition date. Debtor resists summary judgment and requests permission to amend responses to requests for admissions. HELD: Because of Debtor's failure to respond to requests for admissions, the matters are deemed admitted. The Court may allow amendments to the responses. The § 523(a) (2) (C) presumption of fraudulent intent is rebuttable. The record does not conclusively establish the elements of Creditor's claim. Rebuttal evidence would involve issues of intent. Summary judgment is not appropriate. Debtor is allowed to amend her responses to requests for admissions.

First National Bank v. Johnson
(In re David and Anne Johnson)
No. 95-60071KW, Adv. 95-6074KW, Chapter 7, 2/12/96

11 U.S.C. § 523(a) (2) (B)
§ 523(a) (6)

Bank asserts debts are nondischargeable because of conversion of collateral and false financial statements failing to disclose such conversion. Debtors assert Bank approved of the conversion and they had no intent to deceive. Debtor Anne Johnson further asserts that she had no involvement in the financial statement or in her husband's feeder pig business other than being a guarantor and signing the financial statement. HELD: Bank proved that David Johnson had the intent to deceive when he continued to list items he had disposed of as assets on his financial statement. Anne Johnson did not have such intent as she was not involved in her husband's business and had no reason to know he had disposed of some of the business assets. Bank, however, has failed to prove it actually or reasonably relied on the financial statement which included \$32,000 of disposed of property where the reported net worth was over \$300,000. Other circumstances should have raised red flags causing the Bank to investigate the accuracy of the statement. As to the claim of conversion, Bank proved that David Johnson committed willful and malicious conversion. He was sufficiently sophisticated in business to understand that the property he disposed of was the Bank's collateral. He had no explanation for his failure to turn over the proceeds of the collateral.

Avco Financial Service v. Turner (In re Michael John Turner)
No. 94-61008KW, Adv. 94-6137KW, Chapter 7, 10/18/95

11 U.S.C. § 523(a) (2)

Creditor seeks to except its claim from discharge as arising from false statements. Creditor sent a solicitation guaranteeing a \$5,000 loan. Debtor misrepresented the purpose of the loan, hand-wrote on the application that it accurately reflected all of his debts, but did not include his wife's debts, and

answered "No" to the question whether Debtor had ever filed bankruptcy or discussed bankruptcy with an attorney. Debtor's attorney had sent letters to another creditor two months before Debtor filled out the application stating Debtor was contemplating bankruptcy. HELD: Creditor did not rely on Debtor's statement regarding the purpose of the loan. Debtor did not intend to deceive Creditor by omitting his wife's debts from the application. Answering "No" to the bankruptcy question does constitute grounds to except the debt from discharge. The question was material, Debtor's intent is proved by his reckless disregard of the truth and Creditor reasonably relied on the answer.

D. Effect of Discharge, 3411-3440

AT&T Universal Card Svcs. v. Stanton

11 U.S.C. § 523(a) (2)

(In re Thomas J. Stanton)

§ 523(d)

No. 94-21843KD, Adv. 95-2031KD, Chapter 7, 1/10/96

Debtor requested a credit card after receiving a solicitation from AT&T. AT&T provided Debtor with the card and three "convenience checks". Debtor paid off another credit card debt with a convenience check, as suggested in a letter from AT&T, in order to take advantage of a lower interest rate. Several months later, Debtor's brother defaulted on co-signed loans, making Debtor unable to meet his own obligations. AT&T urges that its claim be declared nondischargeable under § 523(a) (2). HELD: A misrepresentation under that statute can occur at the time of the use of the credit card. Then, Debtor's intent becomes most critical. The Court concludes that Debtor did not have the requisite intent to deceive. Debtor is not entitled to an award of attorney fees under § 523(d).

XI. LIQUIDATION, DISTRIBUTION, AND CLOSING, 3441-3460

XII. BROKER LIQUIDATION, 3461-3480

XIII. ADJUSTMENT OF DEBTS OF A MUNICIPALITY, 3481-3500

XIV. REORGANIZATION, 3501-3660

B. The Plan, 3531-3590

In re National Cattle Congress, Inc.

11 U.S.C. § 1129

No. 93-61986KW, Chapter 11, 1/17/96

15 U.S.C. § 1

Debtor and Creditor Jamco both propose Chapter 11 Plans which they assert do not impair any claims. Debtor's plan is funded through a Master Agreement with the Mesquaki Indian Tribe. Jamco plans to pay all claims in cash on the effective date of its Plan. Holding the sheriff's certificate to Debtor's real estate, it will lease the property to Debtor. Jamco also plans to enter into an Operating Agreement with Debtor with a subsidiary managing the greyhound track. It proposes to replace the existing Board of Directors with its own three-member board. HELD: Debtor's Plan does not violate the Federal Sherman Anti-Trust Act or the Iowa Competition Law. It does not contain any blatantly illegal provisions which would preclude a finding of good faith on the part of Debtor. Debtor's agreement with the Mesquaki does not violate 25 U.S.C. § 81 regarding contracts relative to Indian lands. Jamco's objection to the

Mesquaki's non-waiver of sovereign immunity does not bar confirmation. Debtor's Plan adequately discloses information regarding future officers and directors. Debtor's Plan meets feasibility requirements. The Court concludes that Debtor's Plan is confirmable. Debtor's objections to Jamco's plan based on inadequate funding, impairment and § 524(e) are denied. However, Jamco's proposal to cut off rights of redemption of its sheriff certificate impermissibly impairs junior lienholders' rights. Also, Jamco's plan to replace Debtor's Board of Directors constitutes an impermissible conflict of interest. In summary, Jamco's plan is not confirmable. Debtor's Plan is confirmed.

In re Iowa Iron Works, Inc.

11 U.S.C. § 1125(a) (1)

No. 94-11378KW, Chapter 11, 12/27/95

Creditors and the U.S. Trustee object to Debtor's Disclosure Statement. HELD: Adequate disclosure is required in Chapter 11 to allow creditors to make informed judgments regarding the adequacy and feasibility of the Plan. Multiple criteria are examined in determining the Code's "adequate disclosure" requirement. Financial projections regarding future income must be adequately set out. The U.S. Trustee objects to the adequacy of information regarding Debtor's potential liquidation sale and any potential environmental hazards. The IRS states that the Disclosure Statement inaccurately categorizes its claim. The Court concludes that the information provided in the Disclosure statement is noticeably deficient.

In re National Cattle Congress

11 U.S.C. § 1129(a) (3)

No. 93-61986KW, Chapter 11, 12/11/95

Jamco objects to confirmation of Debtor's amended plan, arguing that it is founded upon an illegal contract or conspiracy under state and federal antitrust laws. Debtor's original plan was funded by a master agreement with the Meskwaki Indian tribe. Its amended plan attaches an amended master agreement which deletes earlier provisions prohibiting Debtor from competing with the Meskwakis' casino style gaming which were the most obvious violations of antitrust laws. HELD: Plans arguably illegal in substance are not plainly prohibited by § 1129(a) (3) which requires that plans not be proposed by any means forbidden by law. Assuming that section does apply to the legality of the substance of the plan, the Court considers whether Debtor's plan imposes unreasonable restraints on trade using the "per se rule." The Court restricts its review to the face of the amended plan and the Amended Master Agreement. The amended documents do not prohibit Debtor from pursuing expanded gaming. The Court cannot find a per se antitrust violation based on Jamco's "control scenario" argument.

C. Conversion or Dismissal, 3591-3620

In re S.O.S. Enterprises, Inc.

11 U.S.C. § 1112(b)

No. 95-10203KC, Chapter 11, 1/24/96

Debtor requests an order dismissing its Chapter 11 case. U.S. Trustee supports dismissal as conversion would accomplish nothing. Creditor objects, arguing that its rights arising from postpetition financing must be protected. Also, it requests disposition of its adversary complaint regarding alleged postpetition mismanagement prior to dismissal. HELD: Cause exists to dismiss the case. No reorganization is possible and conversion would be futile. The Court reserves jurisdiction to rule on retention of jurisdiction over the adversary proceeding and protection of Creditor's postpetition security interest.

XV. ARRANGEMENTS, 3661.100-3661.999

XVI. COMPOSITIONS, 3662.100-3670

XVII. ADJUSTMENT OF DEBTS OF FAMILY FARMER, 3671-3700

In re Marcus Joy Gumz

No. 95-61821KW, Chapter 12, 12/7/95

11 U.S.C. § 1208(c)

§ 1225(a)

In considering confirmation of Debtor's Plan and Trustee's Motion to Dismiss, the Court notes that Debtor filed a Chapter 12 bankruptcy petition in Wisconsin with an identical plan of reorganization. The Wisconsin proceeding was dismissed within the preceding month. The dismissal was premised on the court's finding that the plan was not feasible and did not meet the standards of good faith. HELD: Cause exists to dismiss Debtor's petition. There is no likelihood of a successful reorganization through Debtor's plan in which he proposes to overturn a Wisconsin foreclosure judgment using Iowa law. The case is dismissed.

XVIII. INDIVIDUAL DEBT ADJUSTMENT, 3701-3740

In re Wendell and Joann Oliphant

No. L-91-00553C, Chapter 13, 8/29/96

11 U.S.C. § 1328(b)

§ 1307(c) (6)

Debtor seeks hardship discharge in Chapter 13 due to his loss of income following the death of his wife, the co-debtor. Creditor objects and Trustee filed a Motion to Dismiss because of Debtor's default in making plan payments. HELD: Death of the co-debtor constitutes a catastrophic circumstance for which Debtor should not be held accountable. Modification is not practicable. Creditor's claim is nondischargeable pursuant to its consent judgment and the Claims Report. Dismissal for material default is not appropriate in this case.

In re Michael and Randy Williams

No. 93-11513KC, Chapter 13, 8/8/96, appeal filed

11 U.S.C. § 1328(b)

§ 1329

§ 1307(c) (6)

Debtors seek a hardship discharge in Chapter 13, citing increased medical expenses and decreased income. In the alternative, Debtors request modification of their plan. Trustee moves to dismiss for material default in plan payments. HELD: Hardship discharge in Chapter 13 is limited to catastrophic circumstances, not economic reasons. Modification of the plan is not feasible as Debtors have no disposable income. Dismissal for material default is appropriate.

In re Cindee S. Facion

No. 95-12089KC, Chapter 13, 12/22/95

11 U.S.C. § 1325(b)

The Court considers the confirmability of Debtor's Chapter 13 plan. She proposes to pay \$200 per month from disposable income of \$219.87. She lists \$560 per month of her and her husband's combined income as a charitable contribution expense for tithing to her church. HELD: The Court has an

independent duty to review Chapter 13 plans for compliance with the Code. Holding back \$19.87 of her disposable income does not of itself make the plan nonconfirmable. Because of the charitable contribution expense of \$560, however, the Plan does not meet the disposable income requirement of § 1325(b) (1) (B).

In re Jayson Wade Cook

11 U.S.C. § 1322(b) (2)

No. 95-10885KC, Chapter 13, 12/8/95

Bank objects to confirmation. It asserts that Debtor's Plan improperly modifies its secured claims which are secured solely by Debtor's residence. Debtor argues that the claims are also secured by personalty, taking them out of the anti-modification protection of § 1322(b) (2). HELD: Since Debtor had no money in accounts, accounts did not constitute additional security for the loans. Bank's security interest did not attach to home furnishings which constitute consumer goods. Under these circumstances, the loan is secured only by Debtor's residence. Therefore, the Bank's rights may not be modified.

XIX. REVIEW, 3741-3860

In re David and Elaine Hegg

11 U.S.C. § 362

No. 95-20920KD, Chapter 13, 11/2/95

Fed. R. Bankr. P 8005

In a ruling filed August 29, 1995, the Court denied confirmation of Debtors' Chapter 13 plan and allowed Debtors 10 days to convert to Chapter 7 or the matter would be dismissed. Debtors had proposed to fund their plan entirely with proceeds from a lawsuit. Debtors appealed the ruling within the 10 days. They now request the court to enforce the automatic stay or enter an injunction pending appeal to avoid the efforts of a Creditor to regain possession of certain real estate. HELD: Because of Debtors' failure to convert within the 10 days provided by the Court's ruling, the case was effectively dismissed, terminating the automatic stay. Debtors have failed to demonstrate that they are entitled to a stay pending appeal.

XX. OFFENSES, 3861-3863

DECISIONS OF THE HONORABLE PAUL J. KILBURG

April 23, 1993 -- September 30, 1995

I. IN GENERAL, 2001-2120

B. Constitutional and Statutory provisions, 2011-2040

In re Bockes Brothers Farms, Inc., Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa June 16, 1995) (deny modification of order of dismissal)

In re Dean and Barbara Calease, Ch. 7, No. 93-60698LW (Bankr. N.D. Iowa Sept. 20, 1993) (avoidance of lien arising from pre-enactment after-acquired property clause)

C. Jurisdiction, 2041-2080

Deklutz v. Peoples Bank & Trust (In re Robert and Faye Deklutz), Ch. 7, No. L-87-00021C, Adv. 93-1007LC (Bankr. N.D. Iowa Sept. 1, 1993) (lender liability claim which accrued prepetition is barred)

D. Venue; Personal Jurisdiction, 2081-2100

In re Bockes Brothers Farms, Inc., Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa June 16, 1995) (deny modification of order of dismissal)

Hager v. Bockes Brothers Farms (In re Bockes Brothers Farms), Ch. 11, No. 93-60881KW, Adv. 93-6127KW (Bankr. N.D. Iowa Sept. 7, 1993) (remand or abstention in creditor's action to recover forfeited real estate)

II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200

A. In General, 2121-2150

In re Robert Duane Bliss, Ch. 7, No. 93-12048KC (Bankr. N.D. Iowa Dec. 30, 1994) (sanctions for failure to appear)

In re Robert Duane Bliss, Ch. 7, No. 93-12048KC (Bankr. N.D. Iowa Dec. 1, 1994) (rule to show cause)

Bockes Brothers Farms v. Farmland Financial (In re Bockes Brothers Farms, Inc.), Ch. 11, No. 93-60881KW, Adv. 93-6104KW (Bankr. N.D. Iowa March 4, 1994) (protective order re deposition of party's attorney)

B. Actions and Proceedings in General, 2151-2180

Robey v. Kaufman (In re Mark William Kaufman), Ch. 7, No. 94-20551KD, Adv. 94-2094KD (Bankr. N.D. Iowa Dec. 9, 1994) (separate document for amended pleadings)

Farmers Savings Bank & Trust v. Caslavka (In re Lon Michael Caslavka), Ch. 7, No. 92-12304LC, Adv. 93-1049LC (Bankr. N.D. Iowa March 31, 1994) (Federal rate of interest applied post-judgment)

Hoth v. Wells (In re William E. Wells, Jr.), Ch. 7, No. L-90-02393C, Adv. L-92-0076C (Bankr. N.D. Iowa March 29, 1994) (dischargeability re misrepresentation)

III. THE CASE, 2201-2360

B. Debtors, 2221-2250

In re Mary Ann Pierce, Ch. 13, No. 94-60737KW (Bankr. N.D. Iowa July 27, 1994) (appeal withdrawn) ("chapter 20"; spouse's income used to fund debtor's Chapter 13 plan)

In re Darrin T. Palmer, Ch. 13, No. 93-21509KD (Bankr. N.D. Iowa Dec. 1, 1993) (eligibility for Chapter 13, impact of postpetition reduction of debt)

In re Leon and Karen Funke, Ch. 12, No. 93-21255KD (Bankr. N.D. Iowa Oct. 21, 1993) (farmer debtor eligibility; successive filings improper)

In re James and Julie Eckenrod, Ch. 13, No. 93-60178LW (Bankr. N.D. Iowa Aug. 19, 1993) (§ 109(e))

In re Paul and Teresa Bishop, Ch. 7, No. 93-60176LW (Bankr. N.D. Iowa June 29, 1993) ("engaged in farming")

C. Voluntary Cases, 2251-2280

In re Steven and Carmen Rieger, Ch. 7, No. 94-12006KC (Bankr. N.D. Iowa May 19, 1995) (aff'd and appeal dismissed 2/22/96) (dismissal for bad faith; sanctions)

In re Mary Anne Reed, Ch. 7, No. 94-61109KW (Bankr. N.D. Iowa Oct. 11, 1994) (dismiss Chapter 7 because of ability to fund Chapter 13 plan)

D. Involuntary Cases, 2281-2310

In re KOCR-TV, Inc., Ch. 7, No. 95-11128KC (Bankr. N.D. Iowa Sept. 26, 1995) (dismissal of involuntary petition; bona fide dispute)

In re Earl K. Kilberger, Ch. 7, No. 94-11870KC (Bankr. N.D. Iowa Feb. 3, 1995) (abstain from two-party dispute in involuntary bankruptcy)

IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490

B. Automatic Stay, 2391-2420

In re National Cattle Congress, Inc., Ch. 11, No. 93-61986KW (Bankr. N.D. Iowa Jan. 20, 1995), aff'd District Court 10/20/95, remanded 8th Circuit 8/2/96 (published at 179 B.R. 588) (license revocation as violation of automatic stay)

Larken Hotels v. State of North Dakota (In re Larken Hotels Limited Partnership), Ch. 11, No. 94-10388KC, Adv. 94-1027KC (Bankr. N.D. Iowa April 6, 1994) (temporary injunction of criminal proceedings denied)

In re Ricky and Cristie Drahos, Ch. 13, No. 93-60924KW (Bankr. N.D. Iowa Oct. 5, 1993) (debtors' home necessary for effective reorganization)

C. Relief from Stay, 2421-2460

In re Earl and Fay Robertson, Ch. 11, No. 94-11876KC (Bankr. N.D. Iowa Feb. 10, 1995) (relief from stay; no equity, necessary for reorganization)

In re Rausch Brothers Partnership, Ch. 11, No. L90-00151W (Bankr. N.D. Iowa Sept. 14, 1994) (real estate contract forfeiture included irrigation equipment)

In re Leonard W. and Maryan Dostal, Ch. 11, No. 94-10108KC (Bankr. N.D. Iowa March 31, 1994) (relief from stay based on bad faith in filing petition)

In re IGWT Trust, Ch. 11, No. 93-61439KW (Bankr. N.D. Iowa Sept. 7, 1993) (lift stay regarding forfeited real estate)

In re Terry L. Gearhart, Ch. 7, No. 93-10494LC (Bankr. N.D. Iowa Aug. 18, 1993) (no authority to reimpose stay once it has been lifted)

In re Bockes Brothers Farms, Inc., Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa July 26, 1993) (forfeiture of real estate contract completed prepetition)

In re Karl J. Zweibahmer, Ch. 11, No. 93-60650LW (Bankr. N.D. Iowa May 20, 1993) (stay applies to appellate proceedings)

D. Enforcement of Injunction or Stay, 2461-2480

In re Mark Alan French, Ch. 7, No. 95-20770KD (Bankr. N.D. Iowa July 25, 1995) (violation of automatic stay)

In re Jeffrey Roche, Ch. 7, No. 93-10546LC (Bankr. N.D. Iowa June 10, 1993) (no actual damages proven from violation of stay)

V. THE ESTATE, 2491-2760

C. Property of Estate in General, 2531-2570

First National Bank v. Cregar's Autowerks (In re Cregar's Autowerks, Inc.), Ch. 7, No. L92-00872C, Adv. 92-1181LC (Bankr. N.D. Iowa May 12, 1994) (abandonment of car to equitable owner)

In re Bockes Brothers Farms, Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa Sept 16, 1993) (extent of lien in property repossessed and sold prepetition)

In re Gordon and Mary Jo Kunkle, Ch. 7, No. 93-60077LW (Bankr. N.D. Iowa June 4, 1993) (ERISA-qualified plan is not property of the estate)

D. Liens and Transfers; Avoidability, 2571-2600

In re Rene Lee Meseraull, Ch. 7, No. 94-11048KC (Bankr. N.D. Iowa Nov. 18, 1994) (aff'd N.D. Iowa 7/14/95) (lien for debt for improvements on homestead not avoidable)

In re Bradley L. Shanahan, Sr., Ch. 7, No. 94-11127KC (Bankr. N.D. Iowa Nov. 17, 1994) (appeal withdrawn 3/9/95) (lien for preacquisition debt not avoidable)

In re Ricky Lee Booher, Ch. 13, No. 94-10520KC (Bankr. N.D. Iowa Nov. 15, 1994) (priority of liens)

In re Cheryl K. Parman, Ch. 7, No. 94-10592KC (Bankr. N.D. Iowa Sept. 2, 1994) (homestead is exempt from ex-spouse's claim under dissolution decree)

In re Paul and Teresa Bishop, Ch. 7, No. 93-60176LW (Bankr. N.D. Iowa Oct. 21, 1993) (novation extinguishes purchase money interest)

E. Preferences, 2601-2640

Lam v. Weymiller (In re Dennis R. Weymiller), Ch. 7, No. 94-20350KD, Adv. 94-2055KD (Bankr. N.D. Iowa Sept. 14, 1994) (mortgage and payments to parents avoided as preferential transfers)

Currell v. McCool & McCool (In re Charles Joseph Matheny), Ch. 7, No. L-92-00520-C, Adv. 93-1059LC (Bankr. N.D. Iowa Aug. 10, 1993) (non-bankruptcy legal fees recovered)

Henry v. American Trust & Savings (In re McGregor Harbor, Inc.), Ch. 7, No. L-92-00234D, Adv. 92-2239LD (Bankr. N.D. Iowa May 28, 1993) (Deprizio analysis followed)

F. Fraudulent Transfers, 2641-2670

Hager v. Bockes Brothers Farms (In re Bockes Brothers Farms), Ch. 11, No. 93-60881KW, Adv. 93-6127KW (Bankr. N.D. Iowa Jan. 6, 1994) (aff'd N.D. Iowa 4/26/94; appeal dismissed 8th Cir. 5/3/95) (forfeiture of real estate contract as fraudulent transfer)

H. Avoidance Rights, 2701-2740

Reil v. Stanley (In re Ronald B. and Kaye A. Reil), Ch. 11, No. L92-00860W (Bankr. N.D. Iowa Nov. 17, 1994) (motion to amend complaint denied)

VI. EXEMPTIONS, 2761-2820

In re Gary and Linda Ackerman, Ch. 7, No. 94-21846KD (Bankr. N.D. Iowa April 12, 1995) (exemption of masonry tools of the trade)

In re Leon Francis Hageman, Ch. 7, No. 94-60749KW (Bankr. N.D. Iowa April 5, 1995) (failure to object to lien avoidance)

In re Warren L. Caslavka, Ch. 7, No. 93-10188LC (Bankr. N.D. Iowa Feb. 24, 1995) (published at 179 B.R. 141) (exemption of proceeds from pension plan distribution)

In re Bradley Shanahan, Sr., Ch. 7, No. 94-11127KC (Bankr. N.D. Iowa Feb. 24, 1995) (avoidance of lien for ex-spouse's attorney fees)

In re Emily Jean Versluis, Ch. 7, No. 94-61420KW (Bankr. N.D. Iowa Jan. 5, 1995) (homestead liable for preacquisition debt)

In re Joseph and Marlene Stevens, Ch. 7, No. 94-10178KC (Bankr. N.D. Iowa July 27, 1994) (exemption of garden tractor as motor vehicle)

In re Lavern and Dorothy Kahler, Ch. 7, No. 94-10285KC (Bankr. N.D. Iowa June 15, 1994) (exemption of farm equipment)

In re T.C. Ersepke, Ch. 7, No. L-92-00541LD (Bankr. N.D. Iowa Nov. 30, 1993) (whether dissolution judgment can constitute exempt homestead property)

In re Alan Ray Herron, Ch. 7, No. 92-62288LW (Bankr. N.D. Iowa Nov. 5, 1993) (cause for reopening case; objection to avoidance of judicial lien)

In re John and Mary Weber, Ch. 7, No. 93-11093KC (Bankr. N.D. Iowa Oct. 4, 1993) (invasion of homestead exemption for pre-acquisition debt)

In re David and Laura Winkowitsch, Ch. 7, No. 93-60712LW (Bankr. N.D. Iowa Sept. 20, 1993) (following Streeper, objection to avoidance of lien from pre-acquisition debt)

In re Jerry and Carol Jacobsen, Ch. 7, No. 93-10724LC (Bankr. N.D. Iowa Sept. 8, 1993) (mobile home qualifies for homestead exemption)

In re Louis E. Guynn, Ch. 7, No. L-91-1545C (Bankr. N.D. Iowa Aug. 17, 1993) (remainder interest cannot constitute homestead; amendment to exemptions not allowed)

In re Paul and Teresa Bishop, Ch. 7, No. 93-60176LW (Bankr. N.D. Iowa June 29, 1993) ("engaged in farming")

In re Gordon and Mary Jo Kunkle, Ch. 7, No. 93-60077LW (Bankr. N.D. Iowa June 4, 1993) (household goods include home and lawn maintenance equipment)

VII. CLAIMS, 2821-3000

A. In General, 2821-2850

In re Robert and Evelyn Brecunier, Ch. 13, No. L89-01142W (Bankr. N.D. Iowa June 13, 1994) (recomputation of property tax)

B. Secured Claims, 2851-2870

In re Ricky Lee Booher, Ch. 13, No. 94-10520KC (Bankr. N.D. Iowa Mar. 15, 1995) (appeal withdrawn 6/27/95) (realtor commission as administrative expense)

In re Ricky Lee Booher, Ch. 13, No. 94-10520KC (Bankr. N.D. Iowa Feb. 6, 1995) (attorney fees paid from proceeds of sale under 506(c))

C. Administrative Claims, 2871-2890

Lam v. Bossom (In re Dennis R. Weymiller), Ch. 7, No. 94-20350KD, Adv. 95-2039KD (Bankr. N.D. Iowa Sept. 26, 1995) (claim for rent under invalid farm lease)

In re Steven Heitshusen, Ch. 7, No. L-88-00779C (Bankr. N.D. Iowa June 14, 1994) (landlord's claim for rent as administrative expense)

In re Harold Mensching, Ch. 7, No. 92-61313LW (Bankr. N.D. Iowa March 4, 1994) (debtor's attorney fees as administrative expense)

In re Cregar's Autowerks, Inc., Ch. 7, No. L-92-00872C (Bankr. N.D. Iowa Dec. 10, 1993) (rent as necessary expense)

In re ASAP Printing, Inc., Ch. 7, No. 93-60443LW (Bankr. N.D. Iowa Nov. 24, 1993) (whether creditor is entitled to immediate payment of postpetition rent administrative expense claim)

In re ASAP Printing, Inc., Ch. 7, No. 93-60443LW (Bankr. N.D. Iowa July 26, 1993) (rent as administrative expense under § 365(d) (3))

D. Proof; Filing, 2891-2920

In re Cedar Valley Feeds, Inc., Ch. 7, No. L-91-00266C (Bankr. N.D. Iowa May 19, 1995) (sufficiency of IRS Proof of Claim)

E. Determination, 2921-2950

In re Eckhart v. Simon (In Re Carl and Diane Simon), Ch. 12, No. 94-21591KD, Adv. 94-2173KD (Bankr. N.D. Iowa Sept. 26, 1995) (validity of security interest in cattle)

In re Donald and Mary Ann Pierce, Ch. 7, No. 93-61552KW (Bankr. N.D. Iowa March 4, 1994) (abstention from determination of tax liability)

In re Georgie and Laura Arnold, Ch. 12, No. Y87-00767W (Bankr. N.D. Iowa Feb. 14, 1994) (reconsideration of secured claim after confirmation of plan)

F. Priorities, 2951-3000

In re Marlin and Diane Nichols, Ch. 13, No. L88-00954W (Bankr. N.D. Iowa Sept. 28, 1994) (IRS claim for postpetition taxes in Chapter 13)

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

A. In General, 3021-3060

In re Commercial Millwright Service Corp., Ch. 11, No. 95-60007KW (Bankr. N.D. Iowa Sept. 18, 1995) (notice and due process rights under § 364)

In re Donald and Jeri Boyce, Ch. 7, No. 95-20057KD (Bankr. N.D. Iowa June 16, 1995) (value of secured claim for redemption)

In re Connolly Bros. Masonry, Inc., Ch. 7, No. L92-00555W (Bankr. N.D. Iowa May 25, 1994) (approval of compromise and settlement)

In re Larken Hotel Limited Partnership, Ch. 11, No. 94-10388KC (Bankr. N.D. Iowa April 28, 1994) (retroactive approval denied for postpetition payment of prepetition payroll obligations)

In re Bockes Brothers Farms, Inc., Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa May 26, 1993) (cross-collateralization vs. cross-guarantees)

B. Possession, Use, Sale, or Lease of Assets, 3061-3100

Eide v. Trolard (In re David Good), Ch. 7, No. L89-01577W, Adv. L90-0187W (Bankr. N.D. Iowa Nov. 28, 1994) (prejudgment interest)

Eide v. Trolard (In re David Good), Ch. 7, No. L89-01577W, Adv. L90-01987W (Bankr. N.D. Iowa Sept. 21, 1994) (proceeds from sale of rifles subject to § 542 turnover)

In re Larken/LICO Properties, Ch. 11, No. 94-10539KC (Bankr. N.D. Iowa Aug. 2, 1994) (adequate protection and hotel revenues)

Dunbar v. City of Cedar Rapids (In re Cedar Rapids Meats, Inc.), Ch. 7, No. L-90-00445C, Adv. 93-1047LC (Bankr. N.D. Iowa Oct. 4, 1993) (distribution of proceeds of sale under § 724(b))

In re Bockes Brothers Farms, Inc., Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa June 10, 1993) (adequate protection of cash collateral)

C. Debtor's Contracts and Leases, 3101-3130

In re United States Hockey League, Ch. 11, No. 95-60891KW (Bankr. N.D. Iowa Sept. 14, 1995) (rejection of franchise agreement as executory contract)

In re Bockes Brothers Farms, Inc., Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa Aug. 16, 1994) (cure of executory contract or adequate assurance of prompt cure)

In re Bockes Brothers Farms, Inc., Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa April 4, 1994) (real estate contract in Iowa is executory contract)

E. Compensation of Officers and Others, 3151-3250

In re Marlin and Diane Nichols, Ch. 13, No. L88-00954W (Bankr. N.D. Iowa June 6, 1995) (Trustee fee on sale proceeds paid to creditor)

In re Moramerica Financial Corp., Ch. 11, No. 93-10268LC (Bankr. N.D. Iowa May 16, 1994) (compensation of attorney for preparation of fee application)

In re David and Marcia Snook, Ch. 13, No. 92-62249LW (Bankr. N.D. Iowa Jan. 11, 1994) (allowance of fees for debtors' attorney)

X. DISCHARGE, 3251-3440

A. In General, 3251-3270

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In re Roger and Linda Waldrop, Ch. 13, No. L88-10797C (Bankr. N.D. Iowa May 24, 1994) (debtors' request to revoke Chapter 13 discharge)

Tama-Benton Coop v. Hennings (In re Denman and Gwendolyn Hennings), Ch. 11, No. 92-11755LC, Adv. 92-1269LC (Bankr. N.D. Iowa Feb. 8, 1994) (denial of motion to amend judgment; § 727(a) (2) (A) action requires direct proprietary interest in the property transferred)

Firststar Bank v. Ovel (In re Gerald Scott Ovel), Ch. 7, No. L-90-01183C, Adv. L-90-0199C (Bankr. N.D. Iowa Dec. 29, 1993) (aff'd N.D. Iowa 5/12/95) (overstated inventory and failure to explain loss of inventory)

Tama-Benton Coop v. Hennings (In re Denman and Gwendolyn Hennings), Ch. 11, No. 92-11755LC, Adv. 92-1259LC (Bankr. N.D. Iowa Dec. 22, 1993) (explanation of loss or concealment of third-party's property)

Dolezal v. Thomas (In re Virginia Thomas), Ch. 7, No. L-92-00524C, Adv. L-92-0115C (Bankr. N.D. Iowa Sept. 22, 1993) (aff'd N.D. Iowa 2/15/94) (objection to discharge denied, creditor to pay debtor's attorney fees)

Agristor Leasing v. Dinsdale (In re Thomas Dinsdale), Ch. 7, No. L-92-00669C, Adv. 92-1131LC (Bankr. N.D. Iowa Aug. 19, 1993) (aff'd N.D. Iowa 4/5/95) (denial of discharge based on fraudulent transfer)

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Callahan v. Callahan (In re Carol Ann Callahan), Ch. 7, No. 94-11572KC, Adv. 94-1172KC (Bankr. N.D. Iowa Aug. 29, 1995) (dischargeability of dissolution obligation labeled alimony)

United States v. Rausch (In re Robert and Mary Rausch), Ch. 7, No. 94-60633KW, Adv. 94-6098KW (Bankr. N.D. Iowa May 31, 1995) (tire storage as willful and malicious injury)

Pierce v. United States (In re Donald and Mary Ann Pierce), Ch. 7, No. 93-61552KW, Adv. 94-6041KW (Bankr. N.D. Iowa April 12, 1995), appeal dismissed 12/14/95 (dischargeability of taxes)

Cumis Ins. Society v. Kaufman (In re Mark William Kaufman), Ch. 7, No. 94-20551KD, Adv. 94-2070KD (Bankr. N.D. Iowa April 6, 1995) (summary judgment denied re fraud in check kiting scheme)

Berger v. Karr (In re Lonny and Terrill Karr), Ch. 7, No. 94-10547KC, Adv. 94-1082KC (Bankr. N.D. Iowa April 4, 1995) (reliance on material misrepresentation)

Waverly Sales Co. v. Wood (In re Wesley E. Wood) (In re Glenn W. Wood, Jr.), Ch. 7, No. 93-60230LW, 93-60364LW, Adv. 93-6080KW, 93-6081KW (Bankr. N.D. Iowa Jan. 13, 1995) (measure of damages for indemnity; joint and several liability)

Waverly Sales Co. v. Wood (In re Wesley E. Wood) (In re Glenn W. Wood, Jr.), Ch. 7, No. 93-60230LW, 93-60364LW, Adv. 93-6080KW, 93-6081KW (Bankr. N.D. Iowa Oct. 5, 1994) (cattle kiting; nondischargeable for misrepresentation and willful injury)

Siefken v. Siefken (In re Richard Siefken), Ch. 7, No. 93-10451LC, Adv. 93-1114KC (Bankr. N.D. Iowa June 14, 1994) (dischargeability of dissolution award of vehicle to custodial spouse)

Sullivan v. Bear (In re James Louis Bear), Ch. 7, No. 93-21585KD, Adv. 93-2194KD (Bankr. N.D. Iowa April 19, 1994) (assault as willful and malicious injury; § 523(a) (6))

Gearhart v. Gearhart (In re Terry Gearhart), Ch. 7, No. 93-10494LC, Adv. 93-1083KC (Bankr. N.D. Iowa March 29, 1994) (dischargeability of debt for support)

Trannel v. Pluemer (In re Michael David Pluemer), Ch. 7, No. 93-20214LD, Adv. 93-2171LD (Bankr. N.D. Iowa Jan. 11, 1994) (dischargeability of attorney fees arising in action for support)

Maynard Savings Bank v. Ahlhelm In re George Peter Ahlhelm, Ch. 7, No. L92-00617W, Adv. L92-0112W (Bankr. N.D. Iowa Dec. 7, 1993) (false financial statement, embezzlement, conversion)

Dutrac Comm. Credit Union v. Capps (In re Terry and Cynthia Capps), Ch. 7, No. 93-20229KD, Adv. 93-2106KD (Bankr. N.D. Iowa Nov. 24, 1993) (false financial statement)

Ewing v. Ewing (In re Larry Ewing), Ch. 7, No. 92-11343LC, Adv. 92-1231LC (Bankr. N.D. Iowa Nov. 3, 1993) (whether payment owed under dissolution decree constitutes nondischargeable support; conversion of rent check)

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First Bank System v. Walderbach (In re Donna Walderbach), Ch. 7, No. L-92-00780C, Adv. 92-1135LC (Bankr. N.D. Iowa Aug. 31, 1993) (dischargeability of credit card debt)

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In re Denman and Gwendolyn Hennings, Ch. 11, No. 92-11755LC (Bankr. N.D. Iowa Nov. 15, 1993) (confirmation of Chapter 11 cram-down plan)

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In re Ronald and Sheila Truelove, Ch. 13, No. 93-11170KC (Bankr. N.D. Iowa May 26, 1994) (IRS notice of lien filed prior to Chapter 13 discharge)

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